**SUBRAMANIAM VYTHILINGAM**

**v.**

**THE HUMAN RIGHTS COMMISSION OF MALAYSIA & ORS**

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[ORIGINATING SUMMONS NO: S5-21-82-2002]
15 AUGUST 2002

***CIVIL PROCEDURE:*** *Jurisdiction - High Court - Whether High Court had jurisdiction to hear an application for striking out - Whether such application should be heard at first instance before deputy registrar instead*

The defendants applied by way of summons in chambers in encl. 4 to strike out the plaintiff's originating summons in encl. 1 pursuant to O. 18 r. 19(1)(a), (b) and/or (d) of the Rules of the High Court 1980 under the inherent jurisdiction of this court. The plaintiff, however, advanced a preliminary objection that encl. 4 should be heard at the first instance before the learned deputy registrar ('DR") and not before this court, in accordance with Practice Direction No. 1 of 1995 ('the Practice Direction'), enabling the plaintiff to preserve his right of appeal to the judge in chambers in the event he failed to challenge encl. 4.

**Held:**

**[1]** Although this court was certainly bound by the decision of the Federal Court in *Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputera (M) Bhd*, the Practice Direction, as an administrative action, could not prevent this court from hearing encl. 4 to the exclusion of the learned DR. The very nature of encl. 4, which must be read in the context of encl. 1, was such that encl. 4 should be disposed off by this court and not by the learned DR as: (1) encl. 1 sought a declaration that was outside the jurisdiction of the learned DR; and (2) the complexity of encls. 1 and 4 impelled this court to exercise its judicial discretion to hear encl. 4 at the first instance. (pp 364 a, 367 b, 368 e & 369 c)

*[Preliminary objection dismissed.]*

**Case(s) referred to:**

*Datuk (Datu) Amir Kahar Tun Hj Mustapha v. Tun Mohd Said Keruak & Ors [1994] 3 MLJ 737* ***(refd)***

*Datuk Syed Kechik Syed Mohamed v. Government of Malaysia & Anor [1979] 2 MLJ 101* ***(refd)***

*Hanson v. Radcliffe Urban District Council [1922] All ER Rep 160* ***(refd)***
*Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (M) Bhd [2002] 1 CLJ 645* ***(refd)***
*Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v. Karpal Singh [1992] 1 CLJ 36; [1992] 1 CLJ (Rep) 212* ***(refd)***
*Petaling Tin Bhd v. Lee Kian Chan & Ors [1994] 2 CLJ 346* ***(refd)***

**Legislation referred to:**
Federal Constitution, arts. 5, 8
Human Rights Commission of Malaysia Act 1999, ss. 4, 12
Rules of the High Court 1980, O. 14, O. 15 r. 16, O. 18 r. 19(1)(a), (b), (d), O. 32 rr. 9, 10
Specific Relief Act 1950, s. 41

**Other source(s) referred to:**
*The Malaysian High Court Practice*, 1998 Desk edn, vol 1, pp 2258, 2259

*For the plaintiff - M Manoharan; M/s M Manoharan & Co*
*For the defendants - Cecil Abraham (Dhinesh Bhaskaran & SY Liew); M/s Shearn Delamore & Co*

*Reported by Suresh Nathan*

## JUDGMENT

**Abdul Malik Ishak J:**

### Introduction

This was an application by the defendants by way of a summons in chambers in encl. 4 to strike out the plaintiff's originating summons in encl. 1 pursuant to O. 18 r. 19(1)(a), (b) and/or (d) of the Rules of the High Court 1980 ("RHC") and/or under the inherent jurisdiction of this court.

Enclosure 1 was an originating summons filed by the plaintiff and there the plaintiff sought for the following prayers:

1. A declaration that the defendants had breached and/or failed, refused, neglected to comply with Sections 4 and 12 of the Human Rights Commission of Malaysia Act 1999 read together with Article 5 and Article 8 of the Constitution of Malaysia by not setting up, initiating, holding an open inquiry with respect to the Kampung Medan Tragedy that occurred continuously for 15 days commencing from 8.3.2001 to 23.3.2001;

2. An order that the defendants forthwith comply with Sections 4, 12 and in particular, Part III of the Human Rights Commission of Malaysia Act, 1999;

3. The Plaintiff be paid damages in the sum of RM50,000,000.00;

4. The Plaintiff be paid general damages including aggravated and exemplary damages;

5. Interest on the judgment sum at a rate and for a period of time deemed reasonable and proper by this Honourable Court;

6. Cost(s); and

7. Further or other relief (that) this Honourable Court deems fit and proper.

But before I could proceed to hear encl. 4, Mr M Manoharan for the plaintiff advanced a preliminary objection to the following effect: that encl. 4 should be heard, at the first instance, before the learned deputy registrar and not before this court. While Mr Cecil Abraham assisted by Mr Dhinesh Bhaskaran and Mr SY Liew took the views that this court had the jurisdiction to hear encl. 4 forthwith and without further ado.

**The Arguments Of The Parties**

Mr Manoharan was particularly concerned that the plaintiff should be given the option to proceed with the hearing of encl. 4 before the learned deputy registrar and, in the event, the plaintiff failed to succeed before the learned deputy registrar he submitted that the plaintiff would then have the avenue to appeal to the judge in chambers. Basically, he wanted encl. 4 to be heard before the learned deputy registrar in order to enable the plaintiff to go by way of an appeal to the judge in chambers in the event that the plaintiff failed to challenge encl. 4. To the plaintiff, that judicial tier was of utmost importance and he wanted his rights thereto preserved.

My attention was drawn to a Practice Direction No. 1 of 1995 issued by the Registrar of the Kuala Lumpur High Court dated 22 February 1995. That Practice Direction was worded in this way:

Practice Direction No 1 of 1995
Summary Judgment – Order 14 Rules of the High Court
Striking Out Pleadings and Indorsements – Order 18
Rule 19 Rules of the High Court

In exercise of the powers conferred by Order 32 rule 9 of the Rules of the High Court 1980, the Chief Judge of Malaya hereby directs that with effect from 1 April 1995:

(a) All applications for summary judgment under Order 14 of the Rules of the High Court 1980; and

(b) All applications to strike out pleadings and indorsements under Order 18 rule 19 of the Rules of the High Court 1980;

shall be heard by the Registrar.

Practice Direction No 8 of 1992 is hereby revoked with effect from 1 April 1995.

All previous practice directions conferring jurisdiction on the registrar, deputy registrars and senior assistant registrars to hear and dispose of the abovesaid applications that were revoked by Practice Direction No 8 of 1992 are hereby reinstated with effect from 1 April 1995.

Am I bound to comply with that practice direction? Should I let the learned deputy registrar to dispose off encl. 4 at her level?, and thereafter if there was an appeal, that appeal to proceed by way of an appeal to the judge in chambers – which by necessary inference it would ultimately come up before me thereby giving the plaintiff the added judicial tier of appeal. I answer these two questions in this way. That practice direction brought into sharp focus O. 32 r. 9 of the RHC and it would be ideal to reproduce that order:

The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these rules may be transacted and exercised by a Judge in Chambers except such business, authority and jurisdiction as the Chief Justice may from time to time direct be transacted or exercised by a Judge in person or as may by any of these rules be expressly directed to be transacted or exercised by a Judge in person.

*The Malaysian High Court Practice*, 1998 Desk edn, vol. 1, at p. 2258 contains a write up on O. 32 r. 9 of the RHC and it is worded in this way:

NOTES

This rule is derived from RSC 1965 O. 32 r. 11.

[32.9.1] Effect of the rule

Unlike the old rule, this rule is phrased so as to equate the jurisdiction of the registrar to that of the judge in chambers in matters which under the Courts of Judicature Act 1964 (Act 91) or under the rules may be transacted by a judge in chambers, except matters which the Chief Judge may direct or under the rule may only be transacted by a judge. Therefore the registrar cannot deal with what a judge can hear and deal with in open court, unless otherwise directed by the Chief Judge: *Chan Sang & Anor v. Golden Century Development Sdn Bhd & Anor* [1995] 1 CLJ 347.

The registrar has power to deal with matters under the Debtors Act 1957 (Act 256), in particular that as laid down under O. 74 r. 5(1) because there is no direction by the Chief Judge that the registrar is not to exercise the powers thereunder: see *Lau Yeok Lin & Ors v. Hip Soon Engineering & Construction Sdn Bhd* [1988] 2 MLJ 308. This also applies as to jurisdiction to appoint a receiver: *Hwang Ju-in- v. Huang Han Chao* [1977] 2 MLJ 229, CA.

[32.9.2] Appeal from registrar

Appeal from the decision of the registrar is to the judge in chambers by way of O. 56 r. 1: see *Public Bank Bhd v. Chan Tak Kow* [1988] 3 MLJ 330.

In essence, the Chief Judge of Malaya (formerly styled as the Chief Justice) directs the Registrar (which includes the Senior Assistant Registrar and the Deputy Registrar) to hear applications which were meant to be heard by the judge in chambers. It was for this purpose that that practice direction cannot abrogate the powers of the judge to hear, at the first instance, a summary judgment application under O. 14 of the RHC or a striking out application under O. 18 r. 19 of the RHC.

Recently, the Federal Court in *Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (M) Bhd* [2002] 1 CLJ 645 FC had to reckon with, *inter alia*, two pertinent questions of law:

(a) whether a practice direction had the force of law?; and

(b) whether a practice direction could supercede or amend the RHC and an Act of Parliament?

Steve Shim CJ (Sabah and Sarawak), writing a separate judgment, had this to say about practice directions generally (see p. 665 of the report):

In *Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor and Another Appeal* [1995] 4 CLJ 484, it was held that practice directions were effected for administrative purposes. I accept that as a correct statement of the law. Undoubtedly, they provide guidelines for a more effective implementation of the rules of court. They seek to clarify or highlight such rules. They may even, to some extent, modify them, but certainly they are not meant to supercede or deviate from court rules which have been statutorily laid down. To do so would, in my view, be a negation of the authority of Parliament which has conferred powers upon the Rules Committee under s. 17 of the CJA to make the rules of court.

It is true that the Chief Justice has been empowered under r. 110 of the RFC to issue practice directions. So has the President of the Court of Appeal under r. 77 of the RCA. Nevertheless, it cannot have been in the contemplation of Parliament that they can issue practice directions in direct conflict with procedural rules of court which have been statutorily laid down. In my view, to the extent that such practice directions are in conflict, in the sense of superceding or deviating substantially from statutory rules of court, they are of no legal effect whatsoever. Of course, once practice directions have been properly and legally issued, they must be complied with. I believe that to be trite (see *Yeo Yoo Teik v. Jemaah Pengadilan Sewa, Pulau Pinang & Anor* [1996] 2 CLJ 628; *Raja Guppal a/l Ramasamy v. Sagaran a/l Pakian* [1999] 2 CLJ 972).

Abdul Malek Ahmad FCJ, also writing a separate judgment, spoke at length about the value of practice directions. At p. 681 to p. 682 of the report, his Lordship succinctly said:

> However, in view of the respondent's persistence on this preliminary objection, let us just say that a copy of the judgment was also not included in the record of appeal. As the learned counsel for the appellant has argued, they were relying on the relevant practice direction which is the Supreme Court Practice Direction No 1 of 1992 dated 17 June 1992.
>
> The same provisions have been modified for the Court of Appeal *vide* their Practice Direction No 1 of 1995 dated 24 June 1994. If we were to revert to the sequence of events in this appeal, it is crystal clear that the appellant has followed the practice direction to the letter.
>
> But the Supreme Court decision in *Ooi Bee Tat* held that unlike standing orders which are made pursuant to relevant Acts, and which are similar to subsidiary legislation and therefore have the same status as the Rules of the Supreme Court or the Rules of the High Court, practice notes or practice directions have no statutory authority. Practice directions are merely directions for administrative purposes.
>
> In that same month, the Court of Appeal in *Yeo Yoo Teik* decided that although Practice Direction 2/91 does not have the force of law, it must be strictly adhered to as it has been especially framed to regulate the procedure governing the filing of the records of appeal. Three years later, the Court of Appeal in *Raja Guppal a/l Ramasamy* was of the view that the provisions of Practice Direction No. 1 of 1996 must be strictly followed to ensure that there is a systematic and consistent procedure governing the filing of the records of appeal. It further ruled that the conduct of the appellant's solicitor in not complying with that practice direction was not an acceptable explanation for the delay in filing the record of appeal. Four months before that, the Court of Appeal in *Ling Siok Seng v. Ting Sieh Chung* [1998] 4 MLJ 65 said that as regards the fact that the appellant had still not received the notes of proceedings, the appellant should have complied with the Court of Appeal Practice Direction No. 1 of 1996 and there was no evidential material to explain the appellant's failure to do so. Even in *Capital Insurance v. Kasim*'s appeal in the Court of Appeal the second time around, the court had ruled that rules and practice directions made by the court are to be obeyed and not to be broken and parties to an appeal must adhere and comply strictly to those rules and directions.
>
> Apart from the reassuring findings of the four Court of Appeal decisions, I would venture to say that the decision in *Ooi Bee Tat* cannot be correct. This is because practice directions would have the force of law as they are made under the relevant rules. Rule 77 of the RCA states:
>
> > The President may from time to time give such directions with respect to the business in the Registry, as he may consider necessary.

Rule 138 of the Rules of the Supreme Court 1980, by which the present facts of this case are governed, provides:

> The Lord President may from time to time give such directions with respect to the business in the Registry, as he may consider necessary.

In fact, even with that being repealed by the RFC, r. 110 thereof has a similar provision which reads:

> The Chief Justice may from time to time give such directions with respect to the business in the Registry, he may consider necessary.

Having analysed the relevant authorities and considered the arguments for the reasons stated earlier, it is my view that the record of appeal was in fact in order as there was already a copy of the grounds of judgment enclosed therein. Further, placed in the predicament the appellant was in, they had duly complied with the relevant practice direction, which I hold to have the force of law, when the certified true copy of the order, the contents of which had never been challenged, was filed in the supplementary record of appeal within a few days of receiving it without making any application, and also by tendering the said copy at the hearing of the appeal after duly informing the respondent.

Mohtar Abdullah FCJ, in a separate judgment, on the same subject matter remarked at p. 692 of the report:

> As the then Supreme Court noted in *Ooi Bee Tat*, practice directions are directions for administrative purposes and have no statutory authority. They are framed to provide administrative guidelines for the proper implementation of the procedural rules. They help to clarify or highlight existing rules for proper compliance of the said rules as set out in the relevant court rules or the relevant Act of Parliament. The problem is that this particular Court of Appeal Practice Direction No. 1 of 1995 goes beyond its administrative purview as it provides for substantial deviations from the strict procedural rules set out in r. 18 of the RCA. That fault lies with the framers and issuer of the practice direction. A rule of court cannot be amended by an administrative direction. Rule 18 of the RCA should have been modified and amended accordingly to accommodate the two alternative procedures sought to be introduced by the said practice direction. Perhaps, the Chief Justice and/or the Rules Committee might wish to review the various practice directions affecting the High Court, Court of Appeal and Federal Court and, where such directions have the effect of changing or modifying procedural rules set out in the relevant court rules, then the relevant court rules should be amended or modified accordingly. It is clear that practice directions with no statutory authority, cannot supersede the relevant court rules or the relevant Act of Parliament. But where, as in the present case, the existence of the practice direction and its reliance or compliance by a litigant leads to the litigant being punished for his reliance or compliance of the selfsame direction by the court, then surely there is a case for any judge or court to exercise judicial discretion to prevent injustice.

I am certainly guided and bound by the decision of the Federal Court in *Megat Najmuddin*'s case *(supra)*. But that practice direction, with respect, cannot shackle this court from hearing encl. 4 at the first instance. As an administrative direction, that practice direction cannot prevent this court from vigorously hearing encl. 4 to the exclusion of the learned deputy registrar.

Be that as it may, Mr Cecil Abraham, the learned counsel for all the defendants, submitted at some length. He was certainly meticulous and he drew my attention to the background facts surrounding encl. 4. He pointed out that encl. 4 came up before the learned deputy registrar ("DR") by the name of Madam Madihah binti Harullah on 6 June 2002 and on that day he indicated to the learned DR that the defendants preferred that encl. 4 to be heard by the learned judge and, consequently, in pursuance thereto M/s Shearn Delamore & Co wrote a letter to this court intimating their desire that encl. 4 was to be heard by the learned judge prior to the hearing of encl. 1. That letter was dated 6 June 2002 and it was worded as follows (see encl. 8):

Shearn Delamore & Co.
6hb Jun 2002 Serahan tangan

Yang Arif Tuan Hakim Dato' Hj Abdul Malik bin Hj Ishak
Mahkamah Tinggi Sivil 5
Kuala Lumpur

Yang Arif,

Per: Mahkamah Tinggi Kuala Lumpur Saman Pemula No. S5-21-82-2002
Subramaniam a/l Vythilingam lwn
Suruhanjaya Hak Asasi Manusia Malaysia (Suhakam) & 5 Lagi

Kami dengan hormatnya merujuk kepada guaman yang tersebut di atas, di mana kami mewakili Defendan-Defendan. Kami juga dengan hormatnya merujuk kepada Saman Pemula Plaintif (Lampiran 1) yang ditetapkan untuk pendengaran di hadapan Yang Arif pada **04.07.02**.

Pada 29.05.02, anakguam kami telah memfailkan suatu permohonan Saman Dalam Kamar (Lampiran 4) untuk membatalkan Lampiran 1 menurut Aturan 18 Kaedah 19 (1)(a), (b) dan/atau (d) Kaedah-Kaedah Mahkamah Tinggi, 1980 dan/atau bidangkuasa sedia ada Mahkamah. Lampiran 4 kini ditetapkan untuk pendengaran pada **04.07.02** di hadapan Timbalan Pendaftar.

Kami dengan rendah diri berpendapat bahawa pendengaran Lampiran 4 akan melibatkan beberapa isu yang akan memberi kesan kepada pendengaran Lampiran 1 oleh Yang Arif.

Oleh demikian, kami dengan hormatnya memohon supaya Lampiran 4 didengar oleh Yang Arif pada 04.07.02 sebelum Lampiran 1 didengar.

Segala kesulitan yang timbul akibat daripada permohonan kami ini amatlah dikesali.

Sekian, terima kasih.

Yang benar,
t.t. (Illegible).
Shearn Delamore & Co.
DITULIS OLEH Dhinesh Bhaskaran
TALIAN TERUS +603 2076 2897
TALIAN FAKS +603 2034 2763
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s.k. 1. Timbalan Pendaftar
Mahkamah Tinggi Sivil 5
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2. Tetuan M Manoharan & Co
Suite B-4-1, Tower B
Plaza Pantai
No. 5, Jalan 4/83A
Off Jalan Pantai Baru
59200 Kuala Lumpur — Serahan tangan
U/P: En Manoharan Malayalam

3. Human Rights Commission of Malaysia
Tingkat 29, Menara Tun Razak
Jalan Raja Laut
50350 Kuala Lumpur — Serahan tangan
U/P: En Kamaruddin Mohd Baria

The learned DR dutifully brought to my attention the letter in encl. 8 and I directed that encl. 4 to be heard by me and she accordingly relayed the message to the parties by letter dated 11 June 2002 as seen in encl. 10 and that letter was worded in this way:

S5-21-82-02
11hb Jun 2002

Tetuan Shearn Delamore & Co
[B.C. Box No: 191]
[Rujukan No: SD/2344059/DB]

Tuan,

Mahkamah Tinggi Kuala Lumpur
Saman Pemula No: S5-21-82-02
Subramaniam a/l Vythilingam - Plaintif
Suruhanjaya Hak Asasi Manusia Malaysia (Suhakam) - Defendan

Merujuk kepada perkara yang tersebut di atas dan surat tuan bertarikh 6hb. Jun 2002.

2. Adalah dimaklumkan bahawa permohonan pihak peguamcara defendan untuk Lampiran 4 (Aturan 18) didengar oleh Y.A. dibenarkan dan telah ditetapkan pendengaran pada 4/7/2002 di hadapan Y.A. Hakim Dato' Haji Abdul Malik bin Haji Ishak jam 9.00 pagi (Tingkat 11). Lampiran 1 ditangguhkan sehingga lampiran 4 selesai dibicarakan.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'
Saya yang menurut perintah,

t.t. (Illegible).
(MADIHAH BINTI HARULLAH)
Timbalan Pendaftar
Mahkamah Tinggi
Bahagian Sivil 5
KUALA LUMPUR

S.K.

Tetuan M. Manoharan & Co
Peguambela & Peguamcara
Suite B-4-1, Tower B
Plaza Pantai
No. 5, Jalan 4/83A
Off Jalan Pantai Baru
59200 KUALA LUMPUR

I must place on record that what the learned DR did was perfectly above board and within the province of O. 32 r. 10 of the RHC which states as follows:

> The Registrar may refer to a Judge any matter which he thinks should properly be decided by a Judge, and the Judge may either dispose of the matter or refer it back to the Registrar, as the case may be, with such directions as he thinks fit.

A brief write up on O. 32 r. 10 of the RHC appears in the *Malaysian High Court Practice*, 1998 Desk edn, vol. 1, at p. 2258 to p. 2259 and it is germane to reproduce that write up:

> NOTES
>
> This rule is derived from RSC 1965 O 32 12.
>
> [32.10.1] Scope of the rule
>
> This rule gives the registrar a discretion to refer proceedings for the decision of a judge. This power however, is meant to be exercised only in exceptional

cases or circumstances, eg, where the case involves complex issues or a large claim. The judge has the power to review the evidence on which the registrar reports; see *Walmsley v. Mundy* [1883-84] 13 QBD 807; and may decide to hear and determine the matter or refer it back to the registrar with the appropriate directions.

Why did I direct that encl. 4 to be heard by me at the first instance and not before the learned DR? The answer is not far to seek. The very nature of encl. 4 when read with encl. 1 prompted me to decide that encl. 4 should be disposed off by me and not by the learned DR. For this exercise, I must reproduce *verbatim* encl. 4 and I do so now:

**SUMMONS IN CHAMBERS**

Let all parties concerned attend before the Judge/Deputy Registrar in Chambers on the ... day of ..., 2002 at ... am/pm on the hearing of an application on the part of the abovenamed Defendants for the following Orders:

1. That the Originating Summons dated the 17th day of April 2002 and this action be struck out against the Defendants pursuant to Order 18 Rule 19(1)(a), (b) and/or (d) of the Rules of the High Court, 1980 and/or the inherent jurisdiction of this Honourable Court.

2. In the alternative, that the Originating Summons dated the 17th day of April 2002 and this action be struck out against the 2nd to 6th Defendants pursuant to Order 18 Rule 19(1)(a), (b) and/or (d) of the Rules of the High Court, 1980 and/or the inherent jurisdiction of this Honourable Court.

3. In the further alternative, that prayers 3, 4 and 5 of the Originating Summons dated the 17th day of April 2002 be struck out against the Defendants pursuant to Order 18 Rule 19(1)(a), (b) and/or (d) of the Rules of the High Court, 1980 and/or the inherent jurisdiction of this Honourable Court.

4. That the costs of this action, including the costs of this application, be paid by the Plaintiff to the Defendants.

5. Such further or other relief as this Honourable Court may deem fit.

The grounds of this application are set out in detail in the Defendants' Affidavit affirmed by Kamaruddin bin Mohamed Baria on the 29th day of May 2002 and in summary are as follows:

(1) There is no admissible evidence in support of the Originating Summons.

(2) The Plaintiff has no *locus standi* to commence this action and claim the relief sought.

(3) This Honourable Court should not grant the Plaintiff the relief sought in view of the provisions of the Human Rights Commission of Malaysia Act, 1999 ('the Act').

(4) The Plaintiff has no cause of action, and in any event cannot obtain the relief sought, against the 2nd to 6th Defendants.

(5) The Plaintiff cannot claim damages from the Defendants.

(6) This action is premature.

(7) The Defendants have not breached the Act and the Constitution.

(8) The Plaintiff cannot institute this action in view of Section 18(1) of the Act.

(9) In the circumstances, the Originating Summons discloses no reasonable cause of action, is frivolous or vexatious and/or is otherwise an abuse of the process of this Honourable Court.

Dated the 29th day of May 2002

Enclosure 4 cannot be read in isolation. It must be read in the context of encl. 1. As reproduced earlier, encl. 1 sought, *inter alia*, for a declaration and that would certainly be beyond the realm and outside the jurisdiction of the learned DR to handle. In Malaysia, declaration is a popular remedy against the administration. It gives the relief before the damage is caused and it clarifies the legal position (*Petaling Tin Bhd v. Lee Kian Chan & Ors* [1994] 2 CLJ 346 SC, and *Datuk Syed Kechik bin Syed Mohamed v. Government of Malaysia & Anor* [1979] 2 MLJ 101 FC). It merely declares the legal rights of the parties and it has no coercive force. The provisions to order declarations can be found in s. 41 of the Specific Relief Act 1950 and O. 15 r. 16 of the RHC. According to Lord Sterndale MR in *Hanson v. Radcliffe Urban District Council* [1922] All ER Rep 160, 162 that:

> The power of the court to make declarations, when it is a question of determining the rights of two parties to a contract, is now almost unlimited, or limited only by the discretion of the court.

However, Lee Hun Hoe CJ (Borneo) in *Datuk Syed Kechik bin Syed Mohamed v. Government of Malaysia & Anor (supra)*, especially at p. 107 aptly remarked:

> In granting a declaration the court has to consider the utility of the declaration claimed and the usefulness of the declaration on the one hand as against the inconvenience and embarrassment that may result on the other hand.

Thus, if the application for a declaration is frivolous and vexatious and an abuse of the process of the court as envisaged in *Datuk (Datu) Amir Kahar Tun Hj Mustapha v. Tun Mohd Said Keruak & Ors* [1994] 3 MLJ 737, then the court will refuse to grant a declaration. And when the declaration sought is purely theoretical, hypothetical, abstract, premature or academic (*Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v. Karpal Singh* [1992] 1 CLJ 36; [1992] 1 CLJ (Rep) 212 SC), the court is also entitled to refuse to grant a declaration. So much for a brief analysis of the law. Now, encl. 1 also involved the interpretation of ss. 4 and 12 of the Human Rights Commission of Malaysia Act, 1999 read together with arts. 5 and 8 of the Federal Constitution. The complexity of encls. 4 and 1 impelled me to conclude that I should hear encl. 4 at the first instance. It was an exercise of judicial discretion at its best. On the facts of the present case, encl. 4 cannot be termed as a run of the mill line of cases. It was exceptional and it was only fair and in the interest of justice that I should hear encl. 4, at the first instance. This was my judgment and I so hold accordingly.